

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-43815 NCD**

Theresa A. Cotten  
Theresa A. Wyttenback  
SSN XXX-XX-0845

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. U.S. Bank National Association, as Trustee under the Pooling and Servicing Agreement, dated as of February 1, 2001, among Credit-Based Asset Servicing and Securitization LLC, Asset Backed Funding Corporation, Litton Loan Servicing LP, The Chase Manhattan Bank and U.S. Bank National Association, C-Bass Mortgage Loan Asset-Backed Certificates, Series 2001-CB1 c/o Litton Loan Servicing, LP (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on September 2, 2004, before the Honorable Nancy C. Dreher in Courtroom 7 West at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on September 1, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 30, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334,

Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed July 9, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$97,270.94, as evidenced by that certain Promissory Note dated September 20, 2000, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated September 20, 2000, executed by Theresa Wyttenback, a married person, formerly known as Teresa Inman, recorded October 12, 2000, as Document No. 278304, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in her pre-petition monthly mortgage payments to Secured Creditor for the months of November, 2003 through July, 2004, in the total amount of \$11,528.65, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 35 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$135,000.00 subject to Secured

Creditor's mortgage in excess of \$97,270.94.

11. The plan, as proposed, is not made in good faith by Debtor.
12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 26th day of July, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

278304

OFFICE OF COUNTY RECORDER  
STATE OF MINNESOTA  
COUNTY OF ISANTI

This is to certify that this instrument was filed in  
this office on the 12th day of Oct  
2000 A.D. at 11:20 o'clock A M.  
and was recorded as Document No.

PD \$ 1950 278304  
Karen D. Anderson  
County Recorder  
By Debbie Hammen Dep.

Mortgage Registration No. 19872  
has been paid in receipt 10/12/00  
Cheryl M. Meyer County Treasurer  
Countersigned by Nancy Sorenson  
Terry F. Treich County Auditor  
can Deputy

Wheeler, Soczynski

SPACE ABOVE THIS LINE FOR RECORDING DATA  
WHEN RECORDED MAIL TO: PURCHASE MONEY MORTGAGE

COLLATERAL CONTROL  
350 SOUTH GRAND AVENUE, 42ND  
FLOOR

**MORTGAGE**

Loan Number MN013115

LOS ANGELES, CALIFORNIA 90071

NOTICE: THE ADJUSTABLE RATE NOTE SECURED BY THIS MORTGAGE CONTAINS PROVISIONS  
ALLOWING FOR CHANGES IN THE INTEREST RATE AND MONTHLY PAYMENT AMOUNT. THE  
ADJUSTABLE RATE NOTE ALSO LIMITS THE AMOUNT THAT THE INTEREST RATE CAN CHANGE AT  
ANY ONE TIME AND THE MINIMUM AND MAXIMUM INTEREST RATE THAT THE BORROWER MUST  
PAY.

THIS MORTGAGE ("Security Instrument") is made on SEPTEMBER 20, 2000

The mortgagor is THERESA WYTENBACK, a married person, formerly known as  
Theresa Inman,

("Borrower").

The Security Instrument is given to AAMES FUNDING CORPORATION, A CALIFORNIA  
CORPORATION, DBA AAMES HOME LOAN, as mortgagee,  
which is organized and existing under the laws of the state of CALIFORNIA, and whose  
address is 3347 MICHELSON DRIVE, STE. 300, IRVINE, CALIFORNIA 92612

("Lender").

Borrower owes Lender the principal sum of EIGHTY SIX THOUSAND FOUR HUNDRED AND 00/100  
Dollars (U.S. \$ 86,400.00). This debt is evidenced by Borrower's note dated the same date as this  
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and  
payable on OCTOBER 1, 2030. This Security Instrument secures to Lender: (a) the repayment  
of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security  
Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the  
Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and  
assigns, with power of sale, the following described property located in

ISANTI

County, Minnesota:

LOT 5, BLOCK 3, BROOKVIEW SOUTH THIRD ADDITION, ISANTI COUNTY,  
MINNESOTA.

which has the address of 719 NINA STREET, ISANTI, MINNESOTA 55040  
("Property Address");

MINNESOTA ARM/FIXED ARM PROGRAM

Document Systems, Inc. (800) 649-1362

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Borrower's Initials: TW**EXHIBIT** A

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Tax statements for the real property described in this instrument should be sent to:

719 NINA STREET, ISANTI, MINNESOTA 55040

**COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. §2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Theresa A. Cotten  
Theresa A. Wyttenback  
SSN XXX-XX-0845

**CASE NO. 04-43815 NCD**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on July 26, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Theresa A. Cotten  
Theresa A. Wyttenback  
719 Nina Street  
Isanti, MN 55040

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Ian Traquair Ball  
12 South 6<sup>th</sup> Street, Suite 326  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 26th day of July, 2004.

/s/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Theresa A. Cotten  
Theresa A. Wyttenback  
SSN XXX-XX-0845

Debtor.

**CASE NO. 04-43815 NCD**

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This Chapter 13 Case came on before the Court on September 2, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed July 9, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court